

## Commodity Futures Trading Commission

## § 160.3

### § 160.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing nonpublic personal information to most nonaffiliated third parties by “opting out” of that disclosure, subject to the exceptions in §§ 160.13, 160.14, and 160.15.

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to all futures commission merchants, commodity trading advisors, commodity pool operators and introducing brokers that are subject to the jurisdiction of the Commission, regardless whether they are required to register with the Commission. These entities are hereinafter referred to in this part as “you.” This part does not apply to foreign (non-resident) futures commission merchants, commodity trading advisors, commodity pool operators and introducing brokers that are not registered with the Commission. Nothing in this part modifies, limits or supercedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d-1320d-8.

### § 160.2 Rule of construction.

(a) *Safe harbor.* The examples in this part and the sample clauses in the Ap-

pendix to this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

(b) *Substituted compliance.* (1) Any person or entity otherwise subject to this part that is subject to and in compliance with Securities and Exchange Commission Regulation S-P, 17 CFR part 248, will be deemed to be in compliance with this part.

(2) Any commodity trading advisor otherwise subject to this part that is registered or required to be registered as an investment adviser in the state in which it maintains its principal office and place of business as defined in § 275.203A-3 of this title, and that is subject to and in compliance with 16 CFR part 313, will be deemed to be in compliance with this part.

### § 160.3 Definitions.

For purposes of this part, unless the context requires otherwise:

(a) *Affiliate* of a futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker means any company that controls, is controlled by, or is under common control with a futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker that is subject to the jurisdiction of the Commission. In addition, a futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker subject to the jurisdiction of the Commission will be deemed an affiliate of a company for purposes of this part if:

(1) That company is regulated under Title V of the GLB Act by the Federal Trade Commission or by a federal functional regulator other than the Commission; and

(2) Rules adopted by the Federal Trade Commission or another federal functional regulator under Title V of the GLB Act treat the futures commission merchant, commodity trading advisor, commodity pool operator or introducing broker as an affiliate of that company.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to